

# HOUSE . . . . . No. 3715

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## The Commonwealth of Massachusetts

PRESENTED BY:

**John J. Binienda**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to Menu Labeling in Restaurants.

PETITION OF:

NAME:

John J. Binienda

DISTRICT/ADDRESS:

17th Worcester

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO MENU LABELING IN RESTAURANTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Notwithstanding any special or general law to the contrary the following new section shall be added to  
2 the end of Chapter 94:-

3 SECTION 1. This Act may be cited as "The Menu Labeling Act of 2009."

4 SECTION 2. (a) For purposes of this section, the following definitions shall apply:

5 (1) "Food facility" means a food facility in the state that operates under common ownership or control  
6 with at least 9 other food facilities with the same name in the state that offer for sale substantially the  
7 same menu items, or operates as a franchised outlet of a parent company with at least 9 other franchised  
8 outlets with the same name in the state that offer for sale substantially the same menu items, except that a  
9 "food facility" does not include the following:

10 (A) Certified farmer's markets.

11 (B) Commissaries.

12 (C) Licensed health care facilities.

13 (D) Mobile support units.

14 (E) Restricted food service facilities.

15 (F) Retail stores in which a majority of sales are from a pharmacy

16 (G) Vending machines.

17 (2) "Calorie content information" means the total number of calories per standard menu item, as that item  
18 is usually prepared and offered for sale.

(3) "Drive-through" means an area where a customer may provide an order for and receive standard menu items while occupying a motor vehicle.

(4) "Menu board" means a posted list or pictorial display of food or beverage items offered for sale by a food facility. "Menu board" does not include printed or pictorial materials for the purpose of marketing.

(5) "Nutritional information" includes, but is not limited to, all of the following, per standard menu item, as that item is usually prepared and offered for sale:

(A) Total number of calories.

(B) Total number of grams of carbohydrates.

(C) Total number of grams of saturated fat.

(D) Total number of milligrams of sodium.

(6) "Point of sale" means the location where a customer makes an order.

(7) "Standard menu item" means a food or beverage item offered for sale by a food facility through a menu, menu board, or display tag at least 180 days per calendar year, except that "standard menu item" does not include any of the following:

(A) A food item that is customized on a case-by-case basis in response to an unsolicited customer request.

(B) An alcoholic beverage, the labeling of which is not regulated by the federal Food and Drug Administration.

(C) A packaged food otherwise subject to the nutrition labeling requirements of the federal Nutrition Labeling and Education Act of 1990.

(D) A food item when served at a consumer self-service salad bar.

(E) A food or beverage item when served at a consumer self-service buffet.

(F) Condiments.

(G) Other items placed on counters or tables for use without charge to consumers.

(8) "Reasonable basis" means any reasonable means recognized by the federal Food and Drug Administration of determining nutritional information, as well as calorie content information, for a standard menu item, as usually prepared and offered for sale, including, but not limited to, nutrient databases and laboratory analyses.

(9) "Appetizer" means a food item that is generally served prior to a food item that is generally regarded as the primary food item in a meal. An "appetizer" includes a first course, starter, or small plate.

(10) "Dessert" means a food item that is generally served after a food item that is generally regarded as the primary food item in a meal. "Dessert" includes, but is not limited to, cakes, pastries, pies, ice cream and food items that contain ice cream, confections, and other sweets.

(b) (1) Commencing July 1, 2010, to December 31, 2011, inclusive, every food facility shall either disclose nutritional information as required by paragraph (2), or comply with subdivision (c) during this period of time.

(2) (A) In order to comply with paragraph (1), a food facility that does not provide sit-down service shall disclose the information in a clear and conspicuous manner on a brochure that is made available at the point of sale prior to or during the placement of an order. A food facility that provides sit-down service shall provide the nutritional information in a clear and conspicuous size and typeface on at least one of the following:

(i) A brochure available on the table.

(ii) A menu next to each standard menu item.

(iii) A menu, under an index section that is separate from the listing of standard menu items.

(iv) A menu insert.

(v) A table tent on the table.

(B) Notwithstanding subparagraph (A), a food facility that has a drive-through area and uses a menu board to display or list standard menu items at the point of sale shall, for purposes of the drive-through area only, disclose the nutritional information in a clear and conspicuous manner on a brochure that is available upon request, and shall conspicuously display a notice at the point of sale that reads: "NUTRITION INFORMATION IS AVAILABLE UPON REQUEST" or other similar statement that indicates the disclosure of nutrition information is available upon request.

(c) (1) On and after January 1, 2012, every food facility that provides a menu shall disclose calorie content information for a standard menu item next to the item on the menu in a size and typeface that is clear and conspicuous.

(2) On and after January 1, 2012, every food facility that uses an indoor menu board shall disclose calorie content information for a standard menu item next to the item on the menu board in a size and typeface that is clear and conspicuous.

(3) On and after January 1, 2012, every food facility that uses a display tag as an alternative to a menu or menu board to describe a standard menu item that is displayed for sale in a display case within the food facility shall disclose calorie content information for that standard menu item on the display tag for that item in a size and typeface that is clear and conspicuous.

(4) On and after January 1, 2012, every food facility that has a drive-through area and uses a menu board to display or list standard menu items at the point of sale shall, for purposes of the drive-through area only, disclose the nutritional information for each standard menu item in a clear and conspicuous manner on a brochure that is available upon request, and shall clearly and conspicuously display a notice at the point of sale that reads: "NUTRITION INFORMATION IS AVAILABLE UPON REQUEST" or other similar statement that indicates the disclosure of nutrition information upon request. If a food facility subject to this paragraph discloses nutritional information in the manner described in subparagraph (B) of

paragraph (2) of subdivision (b), the food facility shall be deemed to be in compliance with this paragraph.

(d) For purposes of subdivision (c), the disclosure of calorie content information on a menu or menu board next to a standard menu item that is a combination of at least two standard menu items on the menu or menu board, shall, based upon all possible combinations for that standard menu item, include both the minimum amount of calories for the calorie count information and the maximum amount of calories for the calorie count information. If there is only one possible total amount of calories, then this total shall be disclosed.

(e) For purposes of subdivision (c), the disclosure of calorie content information on a menu or menu board next to a standard menu item that is not an appetizer or dessert, but is intended to serve more than one individual, shall include both of the following:

(1) The number of individuals intended to be served by the standard menu item.

(2) The calorie content information per individual serving. If the standard menu item is a combination of at least two standard menu items, this disclosure shall, based upon all possible combinations for that standard menu item, include both the minimum amount of calories for the calorie count information and the maximum amount of calories. If there is only one possible total amount of calories, then this total shall be disclosed.

(f) The nutritional information and calorie content information required by this section shall be determined on a reasonable basis. A reasonable basis determination of nutritional information and calorie content information shall be required only once per standard menu item, provided that portion size is reasonably consistent and the food facility follows a standardized recipe and trains to a consistent method of preparation.

(g) Menus and menu boards may include a disclaimer that indicates that there may be variations in nutritional content across servings, based on variations in overall size and quantities of ingredients, and based on special ordering.

(h) This section shall not be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state law or limit any claim, right of action, or civil liability that otherwise exists under state law. No private right of action shall arise out of this chapter. The only enforcement mechanism of the section is the local enforcement agency.

(i) This section shall not be construed to preclude any food facility from voluntarily providing nutritional information in addition to the requirements of this section.

(j) To the extent consistent with federal law, this section, as well as any other state law that regulates the disclosure of nutritional information, is a matter of statewide concern and occupies the whole field of regulation regarding the disclosure of nutritional information by a food facility as well as content required to be posted on menus, menu boards and food tags. No ordinance or regulation of a local government shall regulate the dissemination of nutritional information or the content required to be placed on menus, menu boards or food tags by a food facility. Any ordinance or regulation that violates this prohibition is void and shall have no force or effect.

125 (k) Commencing July 1, 2010, a food facility that violates this section is guilty of an infraction,  
126 punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500), which  
127 may be assessed by a local enforcement agency. However, a food facility may not be found to violate this  
128 section more than once during an inspection visit. Notwithstanding Section XX, a violation of this section  
129 is not a misdemeanor.

130 (l) Within 180 days after the enactment of this section, the Massachusetts Department of Public Health  
131 shall promulgate regulations defining the specific requirements that constitute substantial compliance  
132 with this section by food facilities.

133 (m) If any provision of this section or the application thereof is for any reason held invalid, ineffective, or  
134 unconstitutional by a court of competent jurisdiction, the remainder of this section shall not be affected  
135 thereby, and to this end, the provisions of this section are severable.

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